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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/779,012

02/07/2001

Mark Flanagan

01 P 7457 US

5615

7590

06/29/2006

Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

EXAMINER

MOORE, IAN N

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/779,012

Applicant(s)

FLANAGAN ET AL.

Examiner

Ian N. Moore

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 17.
Claim(s) rejected: 1, 3, 5-9, 11, 13-16 and 18-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____ *Chau T. Nguyen*
13. ☐ Other: _____.

CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's argument on section B. Qureshi on page 8-9 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., time sequence of packet loss data for disjoint intervals, a smoothing algorithm across such intervals, the occurrence of the packet lost spike will only affect the average percent loss to a minimum degrees) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to the argument on Qureshi on section B page 9, Cheung'957 already discloses the nonoverlapping time interval as set forth above, and the rejection is based upon the combined system of Cheung and Qureshi. Thus, it is clear that the combined system of Cheung'957 and Qureshi discloses the argued "nonoverlapping time intervals". Qureshi clearly discuss "a means to maintain service in the face of transitory quality problems" in FIG. 7A and 7B, where RTP measurement on packet loss is performed, evaluating in accordance with acceptable thresholds, and blocking the calls if they are not acceptable as set forth in the final rejection.

In response to applicant's argument that there is no suggestion to combine the references on section B and section D, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Qureshi'953 states the advantages/benefits/motivation at col. 2, lines 54 to col. 3, lines 12 that it would provide a mechanism for determining the congestion and level of call blocking needed to provide a predetermined quality of service for calls, and by taking the corrective action of blocking the new/future calls according to the packet loss data, it can reduce or eliminate data loss. (Emphasis added)

In response to argument that Qureshi does not disclose "evaluating...interval" on page 10, Cheung'957 discloses evaluating the packet quality data according to a predetermined algorithm (see FIG. 5, algorithm that performs the methods/steps of determining/evaluating the quality requirements (i.e. packet loss); see col. 7, lines 36 to col. 8, lines 25), wherein said algorithm computes said evaluation of packet loss data for each time interval as a function of the packet loss data (see col. 7, line 64 to col. 8, line 14; $p(tk) < p_{\text{maximum}}$, where p is packet loss; and tk time interval). Qureshi'953 teaches collecting data on packet loss for each of a plurality of time interval in a current connection path (see col. 15, lines 38-50, 60-67 to col. 16, lines 20, 29-42; see FIG. 7A, step 700; see col. 18, lines 28-36; note that the system collects/measures data for the packet loss for each of a time interval in the active/current call), evaluating the packet loss data according to a predetermined algorithm (see FIG. 7B, step 725; see col. 18, lines 65 to col. 19, lines 5; note that the packet loss data is determined/evaluated according to the method/algorithm in FIG. 7). Cheng'352 discloses a plurality of nonoverlapping time intervals (see col. 5, line 33 to col. 6, line 10; rates are determined in every time interval (i.e. nonoverlapping time interval)) and wherein said algorithm computes each time interval as a function of the data for that interval and at least one prior interval (see col. 5, line 33-60, see col. 6, lines 7-43; note that sliding window averaging algorithm utilizes each time/number of interval/iterations as a average data for past interval/iteration and the current interval/iteration to compute the average result/data). Thus, it is clear that the combined system of Cheung'957, Qureshi, and Cheng'352 discloses argued claimed invention.

In response to argument that Cheng does not measure packet lost, collected no data on packet loss on section C, page 10-12, Qureshi already discloses the argued claimed invention, and the rejection is based on the combined system of Cheung'957, Qureshi, and Cheng'352, thus it clear that the combined system discloses argued claimed invention.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to argument on motivation Cheng'352 on section C, page 11, examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Cheng'352 states the advantages/benefits at col. 1, lines 25-45 that it would provide accurate and reliable error rate estimation which adapts to channel condition changes.



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